Document:-
A/CN.4/SR.629

Summary record of the 629th meeting

Topic:
Programme of work

Extract from the Yearbook of the International Law Commission:-
1962 , **vol. I**

provisional agenda (Future work in the field of codification and progressive development of international law), on which the Secretariat had produced a working paper (A/CN.4/145). As the General Assembly had devoted a good deal of time to the question, which was of great importance, there would be some advantage in devoting the first two weeks of the session to it, and the discussion would make a substantial contribution to the Commission's report to the Assembly.

16. Sir Humphrey WALDOCK explained that he had not been able to start work on his report as soon as he had anticipated, as he had been unable to obtain release from his duties as President of the European Commission on Human Rights. The report was fairly long, but he thought that its length would eventually save the Commission's time since he had tried to make a synthesis of the very considerable discussion which had already taken place in the Commission.

17. Mr. ROSENNE asked whether the other two questions on which the General Assembly had laid special emphasis, in sub-paragraph 3 (*a*) of resolution 1686 (XVI) — namely, state responsibility and the succession of states and governments — would be discussed under item 2 or under item 6 (Other business). If they were discussed under item 2, two weeks would hardly be sufficient.

18. Mr. LIANG, Secretary to the Commission, said that he had not meant to imply that item 2 would require only two weeks. If the discussion had not been concluded by the beginning of May, the Commission might then follow its usual practice and take up its main item, reverting to the subject of its earlier discussion later. His interpretation of General Assembly resolution 1686 (XVI) was that the Commission was asked to give priority to the topic of the succession of states and governments and during the present session to discuss it only in so far as it pertained to its programme of work; the Commission was not asked to devote a great deal of time to the merits of the question. As to state responsibility, the Commission would consider how to plan its future work on the question. Of course the Commission might, if it so wished, devote some time to a general survey of both questions.

19. The CHAIRMAN proposed that the Commission should discuss item 2 of the agenda for two weeks, then take up the law of treaties, reverting to item 2, if it so wished, at a later stage.

It was so agreed.

The provisional agenda (A/CN.4/142) was adopted.

The meeting rose at 3.55 p.m.

629th MEETING

Wednesday, 25 April 1962, at 10 a.m.
Chairman: Mr. Radhabinod PAL

Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) **(A/CN.4/145)**

1. The CHAIRMAN invited the Commission to consider item 2 of its agenda, on which the Secretariat had prepared a working paper (A/CN.4/145).

2. It was stated in paragraph 7 of that paper that sub-paragraph 3 (*a*) of General Assembly resolution 1686 (XVI) required no comment. He read that observation as meaning that the recommendation amounted to a direction, first, that so far as the law of treaties was concerned, the Commission's prearranged work should continue; secondly, that so far as the topic of state responsibility was concerned, the Commission should continue to work on it and should take the necessary steps to continue the work, maintaining its place in the priority list; and thirdly, that so far as the topic of succession of states and governments was concerned, the Commission should take up its study and include it in the priority list in preference to other topics. In his view, the Commission would have to appoint special rapporteurs for those two topics.

3. With regard to sub-paragraph 3 (*b*) of the resolution, he observed that the Commission was thereby called upon, first, to prepare a new list of topics for the codification and progressive development of international law with a view to bringing the international community under the rule of law; secondly, to plan its method of work for the future; and thirdly, to report its conclusions on those matters to the General Assembly at its seventeenth session.

4. Mr. TUNKIN said that, as he understood it, operative paragraph 3 of resolution 1686 (XVI) reflected the Sixth Committee's intention that the Commission should reconsider its whole programme of work, taking into consideration the discussions in the Sixth Committee and the new circumstances of international life. The Commission could hardly approach any of the subjects, even those mentioned in sub-paragraph 3 (*a*) of the resolution, from a purely technical point of view. It should therefore not limit its discussion at that stage to any specific topic, but enter into a general discussion; that discussion could lead to specific proposals on the three topics mentioned in sub-paragraph 3 (*a*).

5. The Commission should also consider the importance of new methods of work, a topic which had been the subject of much discussion both in the Commission itself and in the Sixth Committee and which was still alive.

6. For those reasons, he suggested that the Commission should begin by discussing paragraph 3 of the resolution as a whole, without endeavouring to single out the topics mentioned in sub-paragraph (*a*). At a later stage the Commission would of course take a separate decision on each topic.

7. Mr. VERDROSS said he agreed with Mr. Tunkin on the need for a general discussion, bearing in mind particularly the new composition of the Commission.

8. He also concurred with the view expressed by the Chairman that, if the Commission retained on its agenda the topic of state responsibility, a special rapporteur should be appointed for that topic. The former rapporteur for the topic had submitted reports which dealt not only with the principles of international law governing state responsibility, but also with the application of those principles to the status of aliens. As he had already pointed out at the previous session,[1] a draft on the subject of the general principles of state responsibility could be completed within a reasonable time, but it was extremely doubtful whether an acceptable draft could be similarly produced in regard to the status of aliens. He therefore repeated the proposal he had then made that the two subjects should be divided, and that the new special rapporteur, if appointed, should be entrusted only with the study of the topic of the general principles of state responsibility.

9. He noted that his further proposal to include the topic of the succession of states and governments had been accepted by the General Assembly. To deal usefully with that topic, however, the Commission needed much more material on the practice of new states. Much research was still required on the subject, and if the topic were retained, the Secretariat should be asked to prepare the necessary material.

10. Mr. AMADO, speaking as one of the members of the Committee of Seventeen which had drawn up the Statute of the International Law Commission and as the Commission's member of longest standing, wished to emphasize the impressive work already performed by the Commission. More than half the topics mentioned in the 1949 secretariat "Survey of International Law in relation to the work of Colification of the International Law Commission"[2] had been disposed of, including the whole of the Law of the Sea. In addition, the Commission had formulated a draft on the continental shelf and had dealt with a number of subjects referred to it by the General Assembly. As a result, there only remained six topics outstanding out of those on the 1949 list. In the case of some of those topics, such as "Recognition of states and governments", state practice was still obscure: other topics were not of great practical importance to the community of states.

11. Notwithstanding some impatience shown in the Sixth Committee's discussions, the Commission should take a calm view. It was called upon to deal first with the law of treaties, a topic which all its members were anxious to see completed. After that, the choice of topics would depend on whether those proposed were ripe for codification. The decision on that point rested with states: it was for them to decide in the light of the conflicting interests in the international community and of the need to find means of coexistence. Speaking for his country in the Sixth Committee, he had made it clear that Brazil understood that term to mean first and foremost the coexistence of the rich and the poor. Viewed in that light, coexistence could be nothing other than peaceful in order to ensure the unhindered international circulation of economic wealth.

12. He emphasized the need for the Commission to work within the limits of its terms of reference as a body of experts entrusted with a task of elucidating the existing rules of international law, those which were alive in the international community, and to formulate those rules in a manner likely to prove acceptable to governments.

13. He agreed as to the need for a general discussion and if from that discussion there emerged agreement on the need to give priority to at least one topic, the time given to it would have been well employed.

14. Mr. PAREDES said the remarkable work accomplished by the International Law Commission would be a source of encouragement for its future work.

15. Although, in article 15 of the Commission's statute, progressive development was mentioned before the codification of international law, the Commission had in fact concentrated on codification. Personally, he felt that mere codification, the scientific reformulation of existing rules in a particular branch of the law, was not sufficient, and that the Commission should enter into a more thorough consideration of the new factors which had recently transformed the character of the rights and duties of states.

16. It seemed to him, from the wording of its statute, that no commission enjoyed greater authority or scope in the search for peace and understanding between peoples, the supreme aim of the United Nations, than the International Law Commission. But it must improve on the past by recognizing and illuminating the new spirit which now informed relations between states. Otherwise it would be betraying the confidence reposed in it. One of the new factors to which he had referred was the tendency for the former principle of unrestricted sovereignty of states to be superseded by that of the interdependence of states. Another was the acknowledgment that the great powers were no longer the unquestioned masters and that the smaller states were entitled to make their views felt. Yet another was the increasing realization that states owed each other mutual assistance and co-operation, particularly in the economic field. A great human aspiration for centuries, the Society of Nations, had now become a reality; states were regarded no longer as completely separate and distinct entities which entertained relations with one another only for selfish ends, but as co-operating closely for the common purpose and the maximum joint benefit. In the light of those considerations, it was essential to review the principles of international law and bring them into line with the new trends that had become manifest and with the future aspirations of humanity. Any codification which did not take that need into account would be premature or ineffective.

17. He agreed with Mr. Tunkin on the need for the Commission to undertake a more thorough study of the problem of its methods of work, to which he would add a study of the aims pursued.

[1] *Yearbook of the International Law Commission, 1961*, Vol. I (United Nations publication, Sales No.: 61.V.1, Vol. I), p. 206, para. 44.

[2] United Nations publication, Sales No.: 48.V.1 (I).

18. Mr. ROSENNE said he broadly shared Mr. Tunkin's understanding of General Assembly resolution 1686 (XVI): the Commission should consider the whole of its future programme of work. The fact that, in sub-paragraph 3 (*a*), a number of topics had been singled out for special mention did not mean that no comment was necessary on those topics.

19. The impressive character of the Commission's past record should be regarded, particularly in view of the Commission's new membership, as a challenge rather than simply as a source of satisfaction. At a time when the Commission consisted of only fifteen members, it had accomplished the tremendous task of the codification of the Law of the Sea. With its membership increased to twenty-one, it had codified the rules governing diplomatic and consular intercourse and immunities. With its present membership of twenty-five, it must endeavour at least to equal that impressive record.

20. He fully concurred with the view so often expressed that, in the task of codification, all undue haste should be avoided. That need should be borne in mind, not only in connexion with the Commission's substantive work, but also in connexion with the study of the programme of work which the Commission would have to undertake in pursuance of paragraph 3 of General Assembly resolution 1686 (XVI). The programme of work drawn up in 1949 had stood the test of time remarkably well. The Commission should endeavour to emulate that example and draw up a constructive and comprehensive programme. In doing so, it should bear in mind that the programme thus drawn up might well take a considerable time to complete. It was significant that the General Assembly had stressed on two occasions the need for a new programme of codification. The debate which led to resolution 1505 (XV) had been of a more or less spontaneous character. At the following session of the General Assembly, a deliberate decision had been adopted on the basis of more preparatory work and had taken the form of paragraph 3 of resolution 1686 (XVI).

21. Following that General Assembly decision, the Commission was faced with two questions: first, whether enough material was available to serve as a basis for the study entrusted to the Commission by the General Assembly, and secondly, how much time would be needed for that study. With regard to the first question, he felt that the 1949 Survey and the working paper recently prepared by the Secretariat (A/CN.4/145) contained enough material for at least a preliminary consideration; the discussion in the Commission would show if any further material was needed. On the second question, he had an open mind. In the discussions in the Sixth Committee, a number of representatives had in fact mentioned that the International Law Commission's final report (called for in sub-paragraph 3 (*b*) of resolution 1686 (XVI)) need not be prepared for the General Assembly's seventeenth session in 1962. If, therefore, the Commission considered that more time was necessary, it was not precluded from making arrangements for submitting its final report at a later date, provided it submitted an interim report the present year.

22. There could be no doubt that the law of treaties would constitute the main topic of discussion at the present session and for the next few years. However, the fact that the chief topic of discussion was known, even where that topic was a vast one, did not preclude the Commission from initiating work on other topics now. Indeed, if the International Law Commission had not maintained the topic of the Law of Treaties on its agenda while it disposed of other subjects, it would have been faccd at the present session with considerable difficulty in finding a subject to which it could devote the major part of its time.

23. The Commission must keep in mind two criteria for the selection of topics. The first was technical feasibility: the possibility of undertaking the codification and progressive development of a subject from the point of view of the material available. Mr. Amado had rightly pointed out that much research was needed on state practice on the subjects of the succession of states and of governments. The second criterion was the political feasibility. That question was not, of course, for the Commission to decide: it was the special function of the Sixth Committee of the General Assembly. That fact bore out the need for a reciprocal exchange of views between the Sixth Committee and the International Law Commission, a factor which was particularly important in drawing up the Commission's future programme of work.

24. The CHAIRMAN pointed out that, by the terms of sub-paragraph 3 (*b*) of resolution 1686 (XVI), the Commission was recommended "to report to the Assembly at its seventeenth session on the conclusions it has reached" regarding its future programme of work.

25. Mr. ELIAS said that most of the newly independent countries in Africa attached great importance to the question of succession of states. At each of the three conferences held at Lagos, Nigeria, within the past twelve months, several delegations of African countries had taken the opportunity to consider the problems arising from the fact that the metropolitan countries on which they had formerly been dependent had signed treaties and agreements affecting them many years before independence. For example, Nigeria, which had attained independence on 1 October 1960, had taken over 334 such agreements from the United Kingdom. The United Kingdom Government had already sent to Nigeria copies of 269 of them. They fell into several categories. Some were bilateral, betwcen the United Kingdom and another sovereign state, some multilateral, between the United Kingdom and several states, but most were agreements signed by the United Kingdom as a member of an international organization. Some dealt with matters that concerned the United Kingdom alone; some concerned the United Kingdom and a number of Commonwealth countries. The majority affected Nigeria as well as the United Kingdom.

26. One example of the difficulties caused by that situation was provided by the Nigerian decision to break off diplomatic relations with France over the question of nuclear tests in the Sahara. When the Netherlands Embassy had taken over the representation of French

interests, the French Government, through the Netherlands Embassy, had drawn attention to a treaty signed in 1923 — a year before the first elected members had participated in the Government of Nigeria — giving France the right to land at airports and to dock at harbours virtually in perpetuity, and had claimed that Nigeria had assumed all the rights and obligations arising out of the 1923 treaty. Happily, diplomatic relations had subsequently been resumed between Nigeria and France and the matter was therefore in abeyance. The question was to what extent a newly independent state should be expected to fulfil all the requirements of such treaties, especially when it had not been a party to them and when the effects were limited to the country concerned. At the time of granting independence, the metropolitan countries had ensured by means of an exchange of letters that treaties and agreements should be kept alive. Unfortunately, most of the negotiators of the formerly dependent countries had been too eager for the attainment of independence to go into the details of such treaties, but as soon as the law officers of the newly independent country had had time to examine them, they had realized what difficulties were likely to ensue.

27. The question therefore arose whether the customary law governing succession of states was broad enough to cover such cases. The secretariat of the Conference of African and Malagasy Heads of State at Lagos had had to contend with that difficulty when drafting the Charter which had emerged from the Conference. He therefore endorsed the suggestion made at the previous meeting by Mr. Rosenne that the Commission should give priority to the topic of succession of States.

28. Mr. CASTRÉN said that, when the Sixth Committee had discussed the Commission's programme of work at the fifteenth and sixteenth sessions of the General Assembly, several delegations had suggested that the Commission should be allowed considerable latitude in deciding the order of work, and several governments had expressed the same view in their observations. The final decision would, of course, rest with the General Assembly, since it was a political rather than a legal question. In the ninth paragraph of the preamble to General Assembly resolution 1505 (XV), the Assembly had said that the Commission's programme of work should be reconsidered in the light of recent developments in international law and with due regard to the need for promoting friendly relations and co-operation among states. That formulation was extremely broad and would cover both codification and the progressive development of international law.

29. The Commission's task was not merely to codify international law but to ensure its progressive development. The exact distinction was difficult to draw at any given moment. The Commission should be prudent, since if it proposed unduly advanced rules of law, the governments would not accept them. It was not precluded from studying topics on which opinions were known to differ, but such topics were not worth studying unless they were important and unless there was some chance of success. The Commission might also study certain topics not of general, but of regional, concern provided they were sufficiently important. It should, however, avoid topics in which the political content was very strong.

30. The Commission should continue its original programme, especially the two topics on which it had already begun work — namely, the law of treaties and state responsibility. Those would provide ample work, although if some subject of particular importance arose, it might be given priority.

31. With regard to form, conventions were generally preferable to codes. The Conventions on the Law of the Sea and on Diplomatic Relations showed that the Commission was competent to undertake that kind of work, and indeed its preliminary work had saved the diplomatic conferences a great deal of time.

32. The Commission should avoid studying any topic which fell within the purview of some other international organization or any topic which was too broad and ill-defined. Its programme should therefore not be drawn up on too long a term or too rigid a basis since the situation might change suddenly and other topics require a higher priority. It could include topics already referred to the Commission, such as the juridical regime of historic waters, including historic bays, and the relations between states and international organizations. For state responsibility it should elect a new special rapporteur and decide whether or not it would be appropriate, for the time being, to deal with the treatment of aliens in that framework. The recognition of states and governments, succession of states and governments, jurisdictional immunities of states and their property, jurisdiction with regard to crimes committed outside national territory and the right of asylum were all important topics and might be given some measure of priority. The governments had proposed about thirty new topics, some of which were extremely interesting, but the time was not yet ripe to undertake them.

33. Some guidance on the organization of the Commission's work had been provided by the Commission's own discussions, by the Sixth Committee of the General Assembly and by the observations of governments. The situation had changed considerably with the recent increase in membership. Admittedly the increase was of positive advantage in that it provided the Commission with new talent, but it also raised new problems. If the Commission always sat in plenary meeting, the debates might become too cumbersome. Perhaps therefore a new system might be adopted and the Commission might divide into two sub-commissions for the first reading of any convention it might prepare. In addition, a small committee might be asked to help the special rapporteur in the interval between sessions and two special rapporteurs might be appointed for very complex subjects, such as state responsibility. The Commission should also be careful to give special rapporteurs as precise instructions as possible. The Commission could, of course, expect from the United Nations Secretariat the same effective help as it had received in the past, but a secretariat of its own might give better results. Outside help might be requested on a larger scale than hitherto. The suggestion that sessions should be extended or that two sessions should be held each year raised difficulties, as members

had their own occupations to attend to. To hold two meetings a day would be impracticable, since there would be too little time to prepare for them. If, however, some of the preparatory work were done by two sub-commissions, both might sit on the same day and members who so wished might attend both of them.

34. Mr. GROS said that he had come to appreciate the difference in atmosphere between the Commission and the committee of the General Assembly. The Commission was a real club, in which ideas that differed from one's own were received with indulgence. The intellectual atmosphere was therefore favourable to the establishment of well-thought-out legal texts, which could later be translated into agreements between states. The Commission should never lose sight of the fact that its task was to prepare texts acceptable to states in the prevailing circumstances. That was why its work at previous sessions had been so successful. Whatever the difficulties encountered, the Commission had been able to prepare draft conventions, thanks to the exchange of experience among members, several of whom had given very helpful explanations of actual practice in their own countries. It was in that spirit that it should approach the question of its programme of work for the next five years.

35. Five years was either a great deal of time or very little time; it really meant five sessions. The Commission should see what it could do in addition to dealing with the law of treaties. If in five years it could also complete the question of state responsibility, it would have achieved a great deal. If states could be brought to agree on the way in which they concluded, applied, and terminated treaties, one of the most solid pillars of international law would have been built. The study of state responsibility would be a second main pillar. It was therefore to be hoped that a report could be produced on state responsibility. The codification of that topic was undoubtedly difficult, as had already emerged from the reports submitted to the Commission. Mr. Tunkin had suggested that new methods should be adopted. He (Mr. Gros) was not sure that it would be wise to decide forthwith to entrust the work to one or perhaps several special rapporteurs. Each member should first state his own approach to the study of the topic. The Commission would have to see whether the topic could be broken down into chapters, and whether certain of those chapters could or must be dealt with first. He himself had an open mind on the subject, but a method of study must be devised which would enable work on the topic of international responsibility to be started at the present session.

36. He agreed with Mr. Elias and Mr. Rosenne that the Commission must undertake the topic of succession of states as it had been instructed to do so by the General Assembly in resolution 1686 (XVI). It would perhaps, however, be preferable to confine the topic to succession of states only, since succession of governments was not of immediate interest.

37. There was no need to be afraid of innovation in international law. He himself was doubtless regarded as a traditionalist, but must point out that for many years past, jurists from capitalist and socialist countries had been accustomed to discussing legal problems together and had managed to reach agreement. The matter had been extremely well put by Mr. Verdross when, speaking at Salzburg in September 1961 as President of the Institute of International Law, he had said: "Our science is perfectly capable of solving the new problems if it takes account of the guiding ideas of international law. For these ideas are in principle also recognized by the new states of Africa and Asia. If the present development of the international community is studied closely, it will be realized that the states represented at the Bandung Conference in 1955 did not in any way proclaim new legal principles, but ideas which are the very foundations of international law, such as the principle of the equality of states, of non-intervention in domestic affairs, of territorial sovereignty, of the peaceful solution of all international disputes and of respect for human rights." That statement reflected the unanimous opinion of jurists in all parts of the world. There was therefore no difficulty for jurists of all schools in interpreting international law according to the new ideas.

38. With regard to the succession of states, the question had not, to his knowledge, given rise to any special difficulties recently, but he would be glad to supply the Commission with information on the way in which negotiations on the subject had been carried on with the former French territories, now independent.

39. To sum up: he noted that it was generally agreed that the Commission should take first the law of treaties; it should now agree on how to tackle state responsibility. He supported the suggestion for taking up the topic of succession of states immediately.

40. Mr. TABIBI said that resolutions 1505 (XV) and 1686 (XVI) had been the outcome of the general feeling in the Sixth Committee that a fresh impetus should be given to the Commission's work. The importance of the role of the Sixth Committee itself, which depended upon the Commission for material for its discussions, should not be underestimated.

41. Views differed in the General Assembly as to the topics to be discussed by the Commission. Some delegations believed it should devote itself mainly to codification, whereas others, including his own, believed that the Commission should not shirk complex subjects of special relevance to the present time, even though they might possess political overtones, because it was the only body in the United Nations which was composed of independent members chosen in their personal capacity, capable of representing the conscience of the world, and thus specially fitted to formulate principles of international law that would further the cause of international co-operation. Many delegations were of the opinion, for example, that the Commission should codify the rules of peaceful co-existence.

42. The Commission's task was not only to work on the three topics listed in sub-paragraph 3 (*a*) of resolution 1686 (XVI), but also to survey the whole of international law with a view to selecting further topics for consideration in the light of the important changes which had taken place in recent years, owing to the disappearance of colonialism and the rise of new states, all of which were now able to take part in the process of

developing international law. The basic material for such a survey was already available in the form of observations by governments, the records of the discussions at the fifteenth and sixteenth sessions of the General Assembly, and the Secretariat's working paper (A/CN.4/145). The Commission should give special attention to those elements of international law which would serve directly to strengthen peace. It must convey its views on its future programme of work to the seventeenth session of the General Assembly.

43. With regard to methods of work, as a government representative in the Sixth Committee he had favoured the idea of holding two meetings a day, but now as a member of the Commission he wished to gain some experience of its working before expressing an opinion. There was certainly great merit in the suggestion, already discussed in the General Assembly, that two special rapporteurs be appointed for each topic, the second being as it were an associate who would be able to take over the work of the principal rapporteur if for one reason or another he could not continue. Another suggestion would be to amend the Commission's statute so as to provide that a special rapporteur not re-elected to membership could complete his work.

44. He recognized the force of the argument against extending the length of the Commission's sessions, because members could not stay away longer from their regular duties, but thought it was timely to consider the possibility of extending the term of membership from five to seven years so as to ensure that work on hand could be finished without a breach of continuity. Such a change might in the long run prove less costly to the United Nations.

45. Mr. de LUNA said he agreed with Mr. Gros regarding the three topics mentioned in sub-paragraph 3 (*a*) of resolution 1686 (XVI).

46. Any further topics for codification or progressive development must pass a threefold test: first, whether, in the view of governments, they were of special urgency; secondly, whether they lent themselves to a draft international instrument which stood a reasonable chance of acceptance, and thirdly, whether the necessary material was available to enable the Commission to do useful work. By applying such criteria the Commission should be in a position to elaborate its future programme of work and if it were guided by a sense of realism, should be successful in framing legal rules for the maintenance of world peace.

47. With regard to methods of work, careful thought should be given to the possibility, where the nature of the subject was suitable, of conducting the first reading at least, in committee rather than in plenary meeting.

48. The CHAIRMAN said that the consensus of opinion was clearly in favour of dealing with the topic of the law of treaties first. As regards the other two topics mentioned in sub-paragraph 3 (*a*) of resolution 1686 (XVI), the observation in paragraph 7 of the Secretariat's working paper (A/CN.4/145), as it was worded, was equivocal; he, on the other hand, expressed his views on the resolution in unequivocal terms. It, however, appeared to him that the Commission would still wish to discuss the order of priority of the topics it wished to take up, including those two.

49. With regard to methods of work, he pointed out that the Commission had not found it feasible in the past, when its membership had been smaller, to adopt any of the methods now suggested. That would be seen by reference to the 1958 *Yearbook,* Vol. II,[3] pages 74 to 76, which contained similar proposals made by Dr. Zourek, and Vol. I,[4] pages 174 to 180, where the matter was thoroughly discussed. The occasion for the discussion was the debates on the working methods of the Commission in the Sixth Committee of the General Assembly at its eleventh and twelfth sessions. Moreover, although no formal decision in that respect was then taken by the Commission, the matter was given a place in its report to the General Assembly, as would be seen from the 1958 *Yearbook,* Vol. II,[3] page 108, paragraphs 62 to 67.

50. With regard to the possibility of extending the term of office of members, he pointed out that the process of preparing a draft, obtaining the observations of governments, which took at least two years, and reconsidering the draft in the light of those observations was a lengthy one, and he himself had already suggested that, if the Commission was to discharge its important functions properly, it ought to be a permanent body or at least possess the same degree of continuity as the International Court of Justice.

51. On the question of choice of topics for codification and progressive development, he drew attention to the 1949 *Yearbook*[5] where, at pages 33 and 34, Mr. Amado and Mr. Scelle suggested some weighty criteria for selection. Fields of tension, fields of potential anarchy of forces and interests demanded immediate attention in that respect for the establishment of some tolerable harmony.

52. Mr. LIANG, Secretary to the Commission, explained that the reference in paragraph 7 of the Secretariat's working paper (A/CN.4/145) to the fact that sub-paragraph 3 (*a*) of resolution 1686 (XIV) required no comment, should be construed in the sense that the recommendation did not fall within the purview of the examination of the future programme of work. The subjects of the law of treaties and of state responsibility had been under discussion by the Commission over a number of years and remained on the Commission's agenda. The topic of succession of states and governments was one that came within the terms of article 18 of the statute. Moreover, under sub-paragraph 3 (*b*) of the same resolution, the Commission might wish to report to the General Assembly at its seventeenth session about the way in which it intended to deal with a number of other topics it had been requested to study, including special missions, relations between states and

[3] *Yearbook of the International Law Commission, 1958,* Vol. II (United Nations publication, Sales No. 58.V.1, Vol. II).

[4] *Yearbook of the International Law Commission, 1958,* Vol. I (United Nations publication, Sales No. 58.V.1, Vol. I).

[5] *Yearbook of the International Law Commission, 1949* (United Nations publication, Sales No. 57.V.1).

intergovernmental organizations, the right of asylum, and the juridical régime of historic waters including historic bays, as indicated in the note appended to the provisional agenda (A/CN.4/142).

53. Mr. ROSENNE said he agreed that the Commission must submit a report on its future programme of work at the seventeenth session, but the terms of sub-paragraph 3 (*b*) did not seem to oblige it to complete its consideration of that programme at the present session. He would not, however, press the point if the members of the Commission thought otherwise.

The meeting rose at 1 p.m.

630th MEETING

Thursday, 26 April 1962, at 10 a.m.

Chairman: Mr. Radhabinod PAL

Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) **(A/CN.4/145)** (*continued*)

1. The CHAIRMAN invited the Commission to continue its discussion of item 2 of the agenda.

2. Mr. LACHS said that he had followed the Commission's work closely from the outset and had taken part in discussions on its progress at twelve sessions of the General Assembly. On more than one occasion, he had been among those who had expressed grave concern at the declining role of international law of which there had been evidence in recent years; the Commission could do much to arrest and reverse that process. Codification was slow and laborious, but the Commission's achievements in that field, compared with earlier official and private efforts, were impressive. It should, however, guard against both excessive adherence to principles that belonged to the past and over-hasty anticipation of future developments.

3. The interesting range of topics referred to the Commission by the General Assembly would call for different methods of approach, and it might prove impossible to deal adequately with some of them. The Commission, in fulfilling its tasks, should take due account of the great changes taking place in the world and keep in touch with the new international relationships that were being formed. Among the topics mentioned in sub-paragraph 3 (*a*) of General Assembly resolution 1686 (XVI), the only one on which work was well under way was the law of treaties, and despite the wording of the sub-paragraph it was clear that state responsibility did not fall within the same category. In the case of the latter, the Commission should not only consider the appointment of a new special rapporteur or rapporteurs, but also decide how the topic was to be treated. A preliminary debate concerning the procedure to be followed in regard to the topic of succession of states and governments would also be necessary.

4. Finally, pursuant to sub-paragraph 3 (*b*) of the same resolution, the Commission would have to give thought to the selection of topics referred to it by the General Assembly and the order in which this should be dealt with.

5. Mr. BRIGGS said he agreed that first priority should be given to a statement of the existing law of treaties and its codification, which should be of the greatest value to states. On a conservative estimate that work was likely to take up most of the Commission's time for the next four or five years, so that the question of the priority to be accorded to other topics was, from the practical point of view, somewhat academic, though it would be of advantage at least to make a start on a few other subjects.

6. Certainly, the trend of opinion in the Sixth Committee of the General Assembly at its sixteenth session had been that the Commission should consider appointing special rapporteurs for the topics of state responsibility, succession of states and special missions. Rather fewer speakers in the Committee had thought that the Commission should deal with the topics of right of asylum, the juridical regime of historic waters and the relations between states and international organizations. He could not judge whether that attitude was due to their being less interested in the topics or to the realization of the limitations of time.

7. If the Commission were to appoint special rapporteurs only for the additional topics, other than the law of treaties, which the General Assembly had asked it to study, there next arose the question whether enough material existed to make codification possible. He noted from paragraph 176 of the Secretariat's working paper (A/CN.4/145) that volumes 10 and 11 in the United Nations *Legislative Series* were devoted to the legal status, privileges and immunities of international organizations, and from paragraph 12 (*c*) that a secretariat study of the juridical regime of historic waters was to be circulated at the present session; but no such material was readily available on the important topic of succession of states, and a special rapporteur might not be willing to undertake research on it until material had been collected and classified.

8. Furthermore, the succession of states and of governments were in reality two separate topics with some analogies and some important differences, both in theory and in practice. Even if state succession were considered alone, the Commission would have to decide whether state succession in relation to treaties, public property, public rights, tort liability, public debts, concessions, contracts, pensions, private rights and the survival or otherwise of the old law should all be treated under the topic. It was conceivable — though he expressed no final opinion on the subject — that it might be preferable to deal with the relation of state succession to treaties in the draft of the law of treaties as part of the topic of the effect of certain political changes on the termination or survival of treaties.